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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10
11 RICHARD CHOWNING,
12 Plaintiff,

13 v.

14
15 NATIONWIDE INSURANCE COMPANY
OF AMERICA; ALLIED INSURANCE
16 COMPANY OF AMERICA;
NATIONWIDE AGRIBUSINESS
17 INSURANCE COMPANY; TITAN
INSURANCE COMPANY INC.;
18 VICTORIA FIRE & CASUALTY
COMPANY and DOES I – V, and ROE
19 CORPORATIONS I – V, inclusive,
20

21 Defendants.

Case No.: 22-cv-00798-CDS-EJY

**STIPULATION AND
PROTECTIVE ORDER**

22 **TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE COUNSEL**
23 **OF RECORD:**

24 **IT IS HEREBY STIPULATED AND AGREED** to, by and between the parties to
25 this action, Plaintiff Richard Chowning and Defendants Nationwide Insurance Company of
26 America, Nationwide Agribusiness Insurance Company, Titan Insurance Company Inc.,
27 Victoria Fire & Casualty Company, and Depositors Insurance Company (collectively
28

referred to herein as “Defendants”), through their respective attorneys of record, that certain documents produced in connection with discovery proceedings in this action shall be subject to the following confidentiality agreement (the “Agreement”):

1. PURPOSES AND LIMITATIONS:

Discovery in this action involves production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation is warranted. Accordingly, Defendants and Plaintiff (jointly, the “parties”) hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE:

The parties further acknowledge that this Stipulated Protective Order does not entitle them to file confidential information under seal. Local Civil Rule 10-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006). The parties’ mere designation of Disclosure or Discovery Material as CONFIDENTIAL does not—without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the

1 confidential, privileged, or otherwise protectable portions of the document, shall be filed.
 2 Any application that seeks to file documents under seal in their entirety should include an
 3 explanation of why redaction is not feasible.

4 **3. DEFINITIONS:**

5 3.1 Action: This pending lawsuit.

6 3.2 Challenging Party: a Party or Non-Party that challenges the designation of
 7 information or items under this Order.

8 3.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
 9 is generated, stored or maintained) or tangible things that qualify for protection under
 10 Nevada Revised Statutes 49.325, *et seq.* and Federal Rule of Civil Procedure 26(c), and
 11 which the respective Designating Party is producing to the other parties pursuant to
 12 discovery requests and procedures while the above-referenced action is pending.

13 3.4 Counsel: Counsel of Record (as well as their support staff).

14 3.5 Designating Party: a Party or Non-Party that designates information or items
 15 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 3.6 Disclosure or Discovery Material: all items or information, regardless of the
 17 medium or manner in which it is generated, stored, or maintained (including, among other
 18 things, testimony, transcripts, and tangible things), that are produced or generated in
 19 disclosures or responses to discovery.

20 3.7 Expert: a person with specialized knowledge or experience in a matter
 21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
 22 expert witness or as a consultant in this Action.

23 3.8 House Counsel: attorneys who are employees of a party to this Action.
 24 House Counsel does not include Outside Counsel of Record or any other outside counsel.

25 3.9 Non-Party: any natural person, partnership, corporation, association or other
 26 legal entity not named as a Party to this action.

27 3.10 Outside Counsel of Record: attorneys who are not employees of a party to
 28 this Action but are retained to represent a party to this Action and have appeared in this

1 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf
2 of that party, and includes support staff.

3 3.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their support
5 staffs).

6 3.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 3.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.

12 3.14 Protected Material: any Disclosure or Discovery Material that is designated
13 as “CONFIDENTIAL.”

14 3.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 **4. SCOPE:**

17 The protections conferred by this Stipulation and Order cover not only Protected
18 Material (as defined above), but also (1) any information copied or extracted from
19 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
20 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
21 that might reveal Protected Material. Any use of Protected Material at trial shall be
22 governed by the orders of the trial judge and other applicable authorities. This Order does
23 not govern the use of Protected Material at trial.

24 **5. DURATION:**

25 Once a case proceeds to trial, information that was designated as CONFIDENTIAL
26 or maintained pursuant to this protective order used or introduced as an exhibit at trial
27 becomes public and will be presumptively available to all members of the public, including
28 the press, unless compelling reasons supported by specific factual findings to proceed

otherwise are made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

6. DESIGNATING PROTECTED MATERIAL:

6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

6.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter

1 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
 2 portion of the material on a page qualifies for protection, the Producing Party also must
 3 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 4 margins).

5 A Party or Non-Party that makes original documents available for inspection need
 6 not designate them for protection until after the inspecting Party has indicated which
 7 documents it would like copied and produced. During the inspection and before the
 8 designation, all of the material made available for inspection shall be deemed
 9 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 10 copied and produced, the Producing Party must determine which documents, or portions
 11 thereof, qualify for protection under this Order. Then, before producing the specified
 12 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
 13 that contains Protected Material. If only a portion of the material on a page qualifies for
 14 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 15 making appropriate markings in the margins).

16 (b) for testimony given in depositions that the Designating Party identifies
 17 the Disclosure or Discovery Material on the record, before the close of the deposition all
 18 protected testimony.

19 (c) for information produced in some form other than documentary and for
 20 any other tangible items, that the Producing Party affix in a prominent place on the exterior
 21 of the container or containers in which the information is stored the legend
 22 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
 23 the Producing Party, to the extent practicable, shall identify the protected portion(s).

24 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 25 to designate qualified information or items does not, standing alone, waive the Designating
 26 Party’s right to secure protection under this Order for such material. Upon timely
 27 correction of a designation, the Receiving Party must make reasonable efforts to assure
 28 that the material is treated in accordance with the provisions of this Order.

1 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS:**

2 7.1. Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time and in a manner that is consistent with the Court's
4 Scheduling Order and Local Rules.

5 7.2 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
7 harass or impose unnecessary expenses and burdens on other parties) may expose the
8 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
9 confidentiality designation, all parties shall continue to afford the material in question the
10 level of protection to which it is entitled under the Producing Party's designation until the
11 Court rules on the challenge.

12 **8. ACCESS TO AND USE OF PROTECTED MATERIAL:**

13 8.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this Action
15 only for prosecuting, defending or attempting to settle this Action. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the Action has been terminated, a Receiving Party must
18 comply with the provisions of Section 12 below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location
20 and in a secure manner that ensures that access is limited to the persons authorized under
21 this Order.

22 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
27 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
28 disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL:

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
 2 unauthorized disclosures were made of all the terms of this Order, and (d) request such
 3 person or persons to execute the “Acknowledgment an Agreement to Be Bound” attached
 4 hereto as Exhibit A.

5 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 6 **PROTECTED MATERIAL:**

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 8 produced material is subject to a claim of privilege or other protection, the obligations of
 9 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
 10 This provision is not intended to modify whatever procedure may be established in an e-
 11 discovery order that provides for production without prior privilege review. Pursuant to
 12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
 13 effect of disclosure of a communication or information covered by the attorney-client
 14 privilege or work product protection, the parties may incorporate their agreement in the
 15 stipulated protective order submitted to the court.

16 **11. MISCELLANEOUS:**

17 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
 18 person to seek its modification by the Court in the future.

19 11.2 Right to Assert Other Objections. By stipulating to the entry of this
 20 Protective Order, no Party waives any right it otherwise would have to object to disclosing
 21 or producing any information or item on any ground not addressed in this Stipulated
 22 Protective Order. Similarly, no Party waives any right to object on any ground to use in
 23 evidence of any of the material covered by this Protective Order.

24 11.3 Filing Protected Material. Any party seeking to file any Confidential
 25 Documents under seal in connection with a motion, trial, or appeal in this action, must file
 26 a motion to seal and must comply with the Ninth Circuit’s directions in Kamakana, 447
 27 F.3d 1172 (9th Cir. 2006), must comply with Local Rule 10-5, and must have an
 28

1 independent basis of good cause or compelling reasons to file such document under seal.

2 L.R. 10-5(a) provides:

3 Unless otherwise permitted by statute, rule, or prior court order, papers filed
 4 with the court under seal must be accompanied by a motion for leave to file
 5 those documents under seal. If papers are filed under seal under prior court
 6 order, the papers must state on the first page, directly under the case number
 7 2:15-cv-869-RFB-(VCF): “FILED UNDER SEAL UNDER COURT
 8 ORDER (ECF No. ____).” All papers filed under seal will remain sealed
 9 until the court either denies the motion to seal or enters an order unsealing
 10 them.

11 Additionally, if any of the parties wish to file a Confidential Document with the Court, any
 12 requirements contained in any Standing Order of the Court must be strictly followed.

13 **12. FINAL DISPOSITION:**

14 After the final disposition of this Action, as defined in paragraph 6, within 60 days
 15 of a written request by the Designating Party, each Receiving Party must return all
 16 Protected Material to the Producing Party or destroy such material. As used in this
 17 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
 18 summaries, and any other format reproducing or capturing any of the Protected Material.
 19 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
 20 written certification to the Producing Party (and, if not the same person or entity, to the
 21 Designating Party) by the 60-day deadline that (1) identifies (by category, where
 22 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 23 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
 24 other format reproducing or capturing any of the Protected Material. Notwithstanding this
 25 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
 26 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
 27 trial exhibits, expert reports, attorney work product, and consultant and expert work
 28 product, even if such materials contain Protected Material. Any such archival copies that

1 contain or constitute Protected Material remain subject to this Protective Order as set forth
2 in Section 5 (DURATION).

3 **13. VIOLATION**

4 Any violation of this Order may be punished by appropriate measures including,
5 without limitation, contempt proceedings and/or monetary sanctions.

6
7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8
9 Dated: October __, 2022

HINES HAMPTON PELANDA LLP

10 By: /s/ Christine Emanuelson

11 Angela Lizada

12 Christine Emanuelson

13 Attorneys for Defendants NATIONWIDE
14 INS. CO. OF AMERICA, ALLIED INS. CO.
15 OF AMERICA, VICTORIA FIRE & CAS.
16 CO., NATIONWIDE AGRIBUSINESS
17 INS. CO., and DEPOSITORS INSURANCE
18 COMPANY

19 Dated: October __, 2022

LAW OFFICE OF DAVID SAMPSON

20 By: /s/ David Sampson

21 David Sampson

22 Attorney for Plaintiff Richard Chowning

23 **ORDER**

24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25 Dated: January 24, 2023

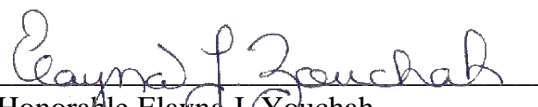
26 
27 Honorable Elayna J. Youchah
28 United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address] declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the District
 of Nevada on _____, 2022 in the case of *Richard Chowning v.*
Nationwide Ins. Co. of Am., et al, U.S. District Court Case No. 22-cv-00798-CDS-
 EJY. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject
 to this Stipulated Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the District of Nevada for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of
 this action. I hereby appoint _____ [print or type full
 name] of _____ [print or type full address
 and telephone number] as my Nevada agent for service of process in connection
 with this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____